



New South Wales

Building Legislation Amendment (Quality of Construction) Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000* with respect to the following matters:
 - (i) functions of certifying authorities,
 - (ii) investigation of certifying authorities,
 - (iii) improper influence with respect to conduct of certifying authorities,
 - (iv) construction certificates,
 - (v) occupation certificates,
 - (vi) conditions of development consents and complying development certificates,
 - (vii) time for giving notice,
 - (viii) fire safety statements,

- (ix) offences and penalties,
- (x) exclusion of personal liability,
- (xi) other miscellaneous matters,
- (xii) savings and transitional provisions,

and to make consequential amendments to the *Environmental Planning and Assessment (Savings and Transitional) Regulation 1998* and the *Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001*, and

- (b) to amend the *Home Building Act 1989* and the *Home Building Regulation 1997* with respect to the following matters:
 - (i) financial solvency of building contractors,
 - (ii) preliminary investigation of building disputes,
 - (iii) use of independent experts in building claims,
 - (iv) implied conditions of contracts to do residential building work,
 - (v) other miscellaneous matters,
 - (vi) savings and transitional provisions,

and to make consequential amendments to the *Home Building Legislation Amendment Act 2001* and the *Consumer, Trader and Tenancy Tribunal Act 2001*, and

- (c) to amend the *Conveyancing (Sale of Land) Regulation 2000* so as to imply into agreements for the sale of land certain provisions restricting the right of the vendors of land to require completion of agreements for the sale of strata units “off the plan” and agreements for the sale of land in the nature of “house and land” packages (that is, combined or associated agreements for the sale of land and the erection of a dwelling-house on the land).

Outline of provisions

Clause 1 specifies the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation, except for Schedule 1.1 [14] whose commencement is tied to the commencement of a provision of the *Land and Environment Court Amendment Act 2002*.

Clause 3 is a formal provision giving effect to a Schedule of amendments to the *Environmental Planning and Assessment Act 1979*, the *Environmental Planning and Assessment Regulation 2000*, the *Environmental Planning and Assessment (Savings and Transitional) Regulation 1998* and the *Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001* (**Schedule 1**).

Clause 4 is a formal provision giving effect to a Schedule of amendments to the *Home Building Act 1989*, the *Home Building Regulation 1997*, the *Home Building Legislation Amendment Act 2001* and the *Consumer, Trader and Tenancy Tribunal Act 2001* (**Schedule 2**).

Clause 5 is a formal provision giving effect to an amendment to the *Conveyancing (Sale of Land) Regulation 2000* (**Schedule 3**).

Schedule 1 Amendment of environmental planning and assessment legislation

This Schedule amends the *Environmental Planning and Assessment Act 1979* (*the 1979 EP&A Act*), the *Environmental Planning and Assessment Regulation 2000* (*the 2000 EP&A Regulation*), the *Environmental Planning and Assessment (Savings and Transitional) Regulation 1998* (*the 1998 EP&A Regulation*) and the *Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001* (*the 2001 LG&EP&A Amendment Act*).

Functions of certifying authorities

Schedule 1.1 [8], [9], [11] and [12] amend sections 81A and 86 of the 1979 EP&A Act to require a principal certifying authority, rather than the person by whom he or she is appointed, to notify the relevant consent authority and council of the appointment.

Schedule 1.1 [10] and [13] amend sections 81A and 86 of the 1979 EP&A Act to exempt Crown development from certain requirements of those sections.

Schedule 1.2 [3]–[6] and [8]–[11] make consequential amendments to clauses 103 and 135 of the 2000 EP&A Regulation.

Schedule 1.1 [16] substitutes section 109E (1) of the 1979 EP&A Act, so as to provide that the appointment of a principal certifying authority for any development is to be made by the person having the benefit of the relevant development consent or complying development certificate, and inserts a new section 109E (1A) so as to prohibit such an appointment being made by a builder who is going to carry out the development unless the builder is the owner of the land concerned.

Schedule 1.1 [17] inserts a new section 109E (3) into the 1979 EP&A Act to set out the functions of a principal certifying authority, which are to be as follows:

- (a) to ensure that a construction certificate is issued in relation to the work,
- (b) to ensure that each person by whom the work is carried out is the holder of the appropriate licence or permit, and is covered by the appropriate insurance, as required by the *Home Building Act 1989*,
- (c) to ensure that, while the work is being carried out, it is inspected on such occasions as are prescribed by the regulations,
- (d) to ensure that compliance certificates are issued for each matter as to which the principal certifying authority must be satisfied before issuing the relevant occupation certificate or subdivision certificate but in respect of which the principal certifying authority proposes to rely on compliance certificates issued by other persons,
- (e) to ensure that all requirements of the Act and the regulations that must be satisfied before an occupation certificate or subdivision certificate may be issued for the work have been satisfied,
- (f) to issue the relevant occupation certificate or subdivision certificate for the work,
- (g) to comply with such other requirements as may be prescribed by the regulations.

Schedule 1.2 [24] inserts a new clause 162A into the 2000 EP&A Regulation to specify the occasions on which building work is to be inspected, as referred to in proposed section 109E (3) (c).

Schedule 1.1 [18] inserts a new section 109EA into the 1979 EP&A Act, replacing the existing section 109E (3) to be repealed by **Schedule 1.1 [17]**, to better identify by whom approval is required before a certifying authority or principal certifying authority for development can be replaced.

Schedule 1.2 [23] makes a consequential amendment to clause 162 of the 2000 EP&A Regulation.

Schedule 1.1 [27] amends section 109ZG of the 1979 EP&A Act so as to relax the existing provision that prohibits an accredited certifier from issuing a Part 4A certificate for work in which he or she has been involved so that it no longer applies merely because he or she has been involved in preparing the plans and specifications for the work.

Investigation of certifying authorities

Schedule 1.1 [31] inserts a new Division 1B into Part 6 of the 1979 EP&A Act. The new Division contains provisions enabling a Departmental auditor appointed by the Director-General of the Department of Planning (*the Director-General*) to investigate the work and activities of a council (proposed section 118P) or an accredited certifier (proposed section 118Q) acting in the capacity of a certifying authority. The powers of a Departmental auditor are set out in proposed section 118R.

Schedule 1.1 [25] repeals section 109U of the 1979 EP&A Act as a consequence of proposed Division 1B, and **Schedule 1.1 [26]** makes a consequential amendment to section 109ZA of that Act.

Improper influence with respect to conduct of accredited certifiers

Schedule 1.1 [40] inserts a new section 148A into the 1979 EP&A Act. The new section makes it an offence, punishable by a fine of up to \$1.1 million or imprisonment for up to 2 years, or both, for an accredited certifier to accept a benefit from any person, or for a person to offer a benefit to an accredited certifier, on the understanding that the accredited certifier will act otherwise than impartially in the exercise of his or her functions as a certifying authority.

Construction certificates

Schedule 1.1 [6] amends section 80 (12) of the 1979 EP&A Act so as to ensure that not only original plans and specifications for which a construction certificate is issued, but also variations to the construction certificate and those plans and specifications, form part of a development consent.

Schedule 1.1 [7] omits from section 80 of the 1979 EP&A Act certain provisions that require a development consent to identify the classification of a proposed building. **Schedule 1.2 [17] and [18]** amend clause 147 of the 2000 EP&A Regulation to make this a requirement of a construction certificate.

Schedule 1.1 [29] makes a consequential amendment to section 116G of the 1979 EP&A Act.

Schedule 1.2 [17] re-enacts in clause 147 of the 2000 EP&A Regulation the provision omitted from section 80 of the 1979 EP&A Act with respect to the classification of buildings.

Occupation certificates

Schedule 1.1 [19] inserts a new paragraph (b1) into section 109H (1) of the 1979 EP&A Act so as to ensure that an occupation certificate cannot be issued in respect of building work unless the principal certifying authority is satisfied that it has been carried out in accordance with any relevant development consent, complying development certificate and construction certificate.

Schedule 1.1 [21] amends section 109M of the 1979 EP&A Act so as to set the maximum penalty for occupying a new building for which an occupation certificate has not been issued at 5 penalty units (\$550) for a Class 1a or Class 10 building (a dwelling-house or ancillary building) and 1,000 penalty units (\$110,000) for any other building.

Schedule 1.1 [22] amends section 109N of the 1979 EP&A Act so as to remove a minor ambiguity of expression.

Schedule 1.2 [21] amends clause 156 of the 2000 EP&A Regulation so as to repeal a provision that currently exempts Class 1a and Class 10 buildings (dwelling-houses and ancillary buildings) from the requirement for an occupation certificate.

Conditions of development consents and complying development certificates

Schedule 1.2 [2] and [14] insert clauses 98A and 98B (in relation to development consents) and clauses 136B and 136C (in relation to complying development certificates) into the 2000 EP&A Regulation. Clauses 98A and 136B require the erection of signage at building and demolition sites identifying the principal certifying authority for the work and the person in charge of the site, and prohibiting unauthorised entry to the site. Clauses 98B and 136C require the council to be given notice of the licence number or owner-builder permit number for the person carrying out the work, and the name of the insurer for the work, under the *Home Building Act 1989*.

Schedule 1.2 [1], [12] and [13] make consequential amendments to the 2000 EP&A Regulation.

Time for giving notice

Schedule 1.2 [7], [15], [16], [20] and [22] amend clauses 130, 138, 142, 151 and 160 of the 2000 EP&A Regulation so as to shorten, from 7 days to 2 days, the time within which certain notices are to be given to the council by an accredited certifier with respect to complying development certificates, compliance certificates, construction certificates, occupation certificates and subdivision certificates.

Fire safety statements

Schedule 1.2 [25] and [26] amend clauses 177 and 180 of the 2000 EP&A Regulation so as to create separate offences for each week by which a person fails to comply with the requirements of those clauses with respect to the giving of annual and supplementary fire safety statements to the council.

Schedule 1.2 [33] and [34] amend Schedule 5 to the 2000 EP&A Regulation so as to create separate penalty notice offences, with penalty amounts ranging from \$500 to \$2,000, for the separate offences created by the proposed amendments to clauses 177 and 180 of that Regulation.

Offences and penalties

Schedule 1.1 [33] amends section 125 of the 1979 EP&A Act so as to ensure that a requirement under that Act that must be complied with by a particular time, or within a particular period, continues after the time has expired or the period ended.

Schedule 1.1 [34] amends section 126 of the 1979 EP&A Act so as to make it clear that the regulations may set their own penalties, and consequently that not all offences against the regulations will attract the default penalty of 1,000 penalty units (\$110,000) that currently applies.

Schedule 1.1 [35] and [37] consequentially amend sections 127 and 127A of the 1979 EP&A Act so as to make it clear that proceedings for an offence may be taken, and penalty notices may be issued, in relation to offences created by the regulations under that Act.

Schedule 1.1 [36] amends section 127 of the 1979 EP&A Act so as to allow proceedings for all offences against the Act, but not offences against the regulations, to be brought up to 2 years after they are alleged to have been committed.

Schedule 1.1 [38] amends section 127A of the 1979 EP&A Act to allow the penalties payable under penalty notices for the same offence to be for different amounts depending, for example, on when the offence was committed.

Schedule 1.1 [39] amends section 127A of the 1979 EP&A Act so as to allow the persons who are to be authorised officers for the purpose of issuing penalty notices to be prescribed by the regulations under that Act.

Schedule 1.2 [28] consequentially amends clause 284 of the 2000 EP&A Regulation to prescribed authorised persons for the purposes of section 127A of the 1979 EP&A Act.

Schedule 1.2 [27], [29] and [30] amend Schedule 5 to the 2000 EP&A Regulation by way of statute law revision by omitting obsolete provisions with respect to short descriptions to be used in penalty notices and other documents in relation to offences.

Schedule 1.2 [31] and [32] amend Schedule 5 to the 2000 EP&A Regulation so as to create a number of “penalty notice offences” for failures to comply with the requirements of certain orders under section 121B of the 1979 EP&A Act, and clauses 130, 138, 142, 151 and 160 of the 2000 EP&A Regulation in relation to the giving of notice in relation to complying development certificates, compliance certificates, construction certificates, occupation certificates and subdivision certificates.

Exclusion of personal liability

Schedule 1.1 [41] inserts proposed section 158 into the 1979 EP&A Act, which protects specified persons from personal liability for acts and omissions for which they are responsible while executing that Act. The persons specified include persons who are members of committees established under sections 20 and 22. In order to ensure that the exclusion of personal liability does not deprive an injured person of a person against whom to commence proceedings for the injury, **Schedule 1.1 [2] and [4]** provide that any such committee is to be a statutory body representing the Crown. The opportunity is taken to substitute the provision that sets out the functions of a committee established under section 22 (**Schedule 1.1 [3]**), so as to ensure that they include the functions exercised by all currently constituted committees.

Other miscellaneous matters

Schedule 1.1 [1] amends section 18 of the 1979 EP&A Act so as to remove references to provisions that no longer exist.

Schedule 1.1 [5] amends section 23 of the 1979 EP&A Act so as to extend the powers of the Director-General to delegate certain functions.

Schedule 1.1 [14] replaces references to a council in section 96AA of the 1979 EP&A Act with references to a consent authority, a correction by way of statute law revision.

Schedule 1.1 [15] amends section 109C of the 1979 EP&A Act so as to make it clear that a single compliance certificate can deal with a number of matters.

Schedule 1.1 [20] amends section 109H of the 1979 EP&A Act so as to remove a minor ambiguity of expression.

Schedule 1.1 [23] amends section 109Q of the 1979 EP&A Act so as to enable the regulations under Part 4A of that Act to authorise the imposition of a fee with respect to Part 4A certificates that are lodged with a consent authority or council.

Schedule 1.1 [24] amends section 109T of the 1979 EP&A Act so as to allow an accreditation body to rely on a certificate of currency issued by an insurance company when determining whether or not an accredited certifier is covered by the required insurance.

Schedule 1.1 [28] amends section 109ZN of the 1979 EP&A Act so as to allow a council employee to act as an accredited certifier outside the council area if covered by the council's general insurance policy in relation to those activities.

Schedule 1.1 [30] amends section 118A of the 1979 EP&A Act so as to ensure that a principal certifying authority has a statutory right of entry to the land on which is being carried out any development for which he or she has been appointed as the principal certifying authority.

Schedule 1.1 [32] amends section 121H of the 1979 EP&A Act so as to require a council to notify the principal certifying authority for any development being carried out before it gives an order under Division 2A of Part 6 of that Act in respect of any aspect of the development.

Schedule 1.2 [18] amends clause 147 of the 2000 EP&A Regulation so as to make it clear that different parts of the same building may have different building classifications.

Schedule 1.2 [19] amends clause 148 of the 2000 EP&A Regulation so as to require the Commissioner of NSW Fire Brigades to be notified if the construction certificate for a proposed building that has originally been referred to the Commissioner for evaluation is subsequently modified in such a manner that the building concerned is no longer such as to require evaluation by the Commissioner.

Savings and transitional provisions

Schedule 1.1 [42] and [43] amend Schedule 6 to the 1979 EP&A Act so as to enact certain savings and transitional provisions consequent on the amendment of that Act by the proposed Act and so as to enable the regulations under that Act to enact further savings and transitional provisions.

Environmental Planning and Assessment (Savings and Transitional) Regulation 1998

Schedule 1.3 omits clause 51 of the 1998 EP&A Regulation so as to terminate a savings provision that allows certain activities to be carried out under former provisions of the *Local Government Act 1993*, rather than those of the 1979 EP&A Act.

Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001

Schedule 1.4 amends the 2001 LG&EP&A Amendment Act so as to repeal provisions that are replicated by Schedule 1.1 [34], [36] and [37] of the proposed Act.

Schedule 2 Amendment of home building legislation

This Schedule amends the *Home Building Act 1989* (*the 1989 HB Act*), the *Home Building Regulation 1997* (*the 1997 HB Regulation*), the *Home Building Legislation Amendment Act 2001* (*the 2001 HB Amending Act*) and the *Consumer, Trader and Tenancy Tribunal Act 2001* (*the 2001 CTTT Act*).

Financial solvency of building contractors

Schedule 2.1 [2], [3] and [4] amend sections 20 and 40 of the 1989 HB Act so as to require the Director-General of the Department of Fair Trading (*the Director-General*) to reject an application for a licence, or for renewal or restoration of a licence, unless satisfied that the applicant meets appropriate standards of financial solvency, and that the Director-General's decision as to such standards is not reviewable by the Administrative Decisions Tribunal.

Preliminary investigation of building disputes

Schedule 2.1 [6] substitutes Division 2 of Part 3A of the 1989 HB Act so as to establish a new regime for the preliminary investigation of building disputes. Under the new regime, notification of a building dispute may give rise to an investigation by an inspector from the Department of Fair Trading (proposed section 48D), who may make an order requiring specified work to be done in order to rectify incomplete or defective work (proposed section 48E). Failure to comply with the requirements of a rectification order will constitute improper conduct for which disciplinary action may be taken against the contractor concerned (under amendments to section 51 by **Schedule 2.1** [13]), but will not give rise to any right of action by the complainant, and ceases to have effect if a building claim is made before the time within which the work required by the order must be done (proposed section 48F).

Schedule 2.1 [7] amends section 48I of the 1989 HB Act so as to provide for the withdrawal of building claims from the Consumer, Trader and Tenancy Tribunal, and ensures that the Tribunal has an opportunity to restore a rectification order (made under proposed section 48E) that ceased to have effect when the building claim was made.

Schedule 2.1 [8] substitutes section 48J of the 1989 HB Act to ensure that building claims do not have to be accepted by the Tribunal unless the Registrar of the Tribunal is satisfied that a building dispute has been investigated in accordance with the proposed Division 2 of Part 3A of that Act.

Schedule 2.1 [5], [9], [10] and [12] make consequential amendments to sections 48A and 48N of the 1989 HB Act.

Use of independent experts in building claims

Schedule 2.1 [11] amends section 48N of the 1989 HB Act so as to enable an independent expert to be appointed to assist the Consumer, Trader and Tenancy Tribunal to deal with a building claim. If such an expert is appointed, no other building expert may be called by the parties to the building claim except by leave of the Tribunal.

Implied conditions of contracts to do residential building work

Schedule 2.2 [2] inserts proposed Schedule 3A into the 1997 HB Regulation. The new Schedule prescribes conditions with respect to the plans and specifications for building work and kit homes (clauses 1 and 4), conditions with respect to quality of construction of building work and kit homes (clauses 2 and 5) and a condition holding back the final payment for building work until all requirements for the issuing of a final occupation certificate under Part 4A of the 1979 EP&A Act have been complied with.

Schedule 2.2 [1] makes a consequential amendment to the 1997 HB Regulation (proposed clause 59).

Other miscellaneous matters

Schedule 2.1 [14] amends section 54 of the 1989 HB Act so as to ensure that disciplinary action can be taken under Part 4 of that Act against individuals who are members of partnerships or officers of corporations. **Schedule 2.1 [1]** amends section 3 of the 1989 HB Act to insert a definition of *officer*.

Schedule 2.1 [15] amends section 62 of the 1989 HB Act so as to provide that cancellation of an authority, and disqualification from holding an authority, are separate actions that can be taken in relation to the holder of an authority who is found guilty of improper conduct.

Schedule 2.1 [16] makes a minor grammatical correction to section 126 of the 1989 HB Act.

Schedule 2.1 [17] amends section 138A of the 1989 HB Act so as to ensure that Department of Fair Trading investigators can issue penalty notices under that Act.

Savings and transitional provisions

Schedule 2.1 [18] and [19] amend Schedule 4 to the 1989 HB Act so as to enact certain savings and transitional provisions consequent on the amendment of that Act by the proposed Act and so as to enable the regulations under that Act to enact further savings and transitional provisions.

Home Building Legislation Amendment Act 2001

Schedule 2.3 amends the 2001 HB Amending Act by way of statute law revision so as to remove references in a savings provision to a non-existent provision of the 1989 HB Act.

Consumer, Trader and Tenancy Tribunal Act 2001

Schedule 2.4 amends section 28 of the 2001 CTTT Act so as to provide that the provisions of that section with respect to the withdrawal of applications to the Consumer, Trader and Tenancy Tribunal do not apply to certain building claims under the 1989 HB Act. This amendment is consequential on the proposed amendments to section 48I of the 1989 HB Act by **Schedule 2.1 [7]**.

Schedule 3 Amendment of conveyancing legislation

This Schedule amends Schedule 2 to the *Conveyancing (Sale of Land) Regulation 2000* so as to imply into agreements for the sale of land certain provisions restricting the right of the vendors of land to require completion of agreements for the sale of strata units “off the plan” and agreements for the sale of land in the nature of “house and land” packages (that is, combined or associated agreements for the sale of land and the erection of a dwelling-house on the land).



New South Wales

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New South Wales

Building Legislation Amendment (Quality of Construction) Bill 2002

No. _____, 2002

A Bill for

An Act to amend the *Environmental Planning and Assessment Act 1979*, the *Home Building Act 1989* and various other Acts and instruments with respect to the quality of building construction; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Building Legislation Amendment (Quality of Construction) Act 2002</i> .	3 4
2 Commencement	5
(1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).	6 7
(2) Schedule 1.1 [14] commences on the date of assent to this Act, or on the commencement of Schedule 2 [6] to the <i>Land and Environment Court Amendment Act 2002</i> , whichever is the later.	8 9 10
3 Amendment of environmental planning and assessment legislation	11
The <i>Environmental Planning and Assessment Act 1979</i> , the <i>Environmental Planning and Assessment Regulation 2000</i> , the <i>Environmental Planning and Assessment (Savings and Transitional) Regulation 1998</i> and the <i>Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001</i> are amended as set out in Schedule 1.	12 13 14 15 16 17
4 Amendment of home building legislation	18
The <i>Home Building Act 1989</i> , the <i>Home Building Regulation 1997</i> , the <i>Home Building Legislation Amendment Act 2001</i> and the <i>Consumer, Trader and Tenancy Tribunal Act 2001</i> are amended as set out in Schedule 2.	19 20 21 22
5 Amendment of conveyancing legislation	23
The <i>Conveyancing (Sale of Land) Regulation 2000</i> is amended as set out in Schedule 3.	24 25

Schedule 1	Amendment of environmental planning and assessment legislation	1
		2
	(Section 3)	3
1.1	Environmental Planning and Assessment Act 1979 No 203	4
[1]	Section 18 Commissioners of Inquiry	5
	Omit section 18 (2) and (4) (b).	6
[2]	Section 20 Local Government Liaison Committee	7
	Insert after section 20 (3):	8
	(4) The Committee is, for the purpose of any Act, a statutory body representing the Crown.	9 10
[3]	Section 22 Establishment of other committees	11
	Omit section 22 (2). Insert instead:	12
	(2) The functions of a committee established under subsection (1) are to be as specified in the instrument by which the committee is established, and (without limitation) may include:	13 14 15 16
	(a) the investigation of any matter relevant to the administration or execution of this Act, and	17 18
	(b) the preparation of advice, opinions or recommendations with respect to any such matter for the Minister, the Director-General, a consent authority or any other person or body engaged in the administration of this Act.	19 20 21 22 23
[4]	Section 22 (5)	24
	Insert after section 22 (4):	25
	(5) A committee established under subsection (1) is, for the purpose of any Act, a statutory body representing the Crown.	26 27
[5]	Section 23 Delegation	28
	Insert after section 23 (1):	29
	(1A) A function with respect to an accreditation body that is delegated to the Director-General under subsection (1) by the Minister may be subdelegated by the Director-General to any	30 31 32

person referred to in subsection (1) (a)–(f), except to the extent to which the terms of the delegation prohibit subdelegation.	1 2 3
[6] Section 80 Determination	4
Insert “, together with any variations to the construction certificate or plans and specifications that are effected in accordance with this Act or the regulations,” before “are taken” in section 80 (12).	5 6 7
[7] Section 80 (13) and (14)	8
Omit the subsections, including the note appearing after subsection (14).	9
[8] Section 81A Effects of development consents and commencement of development	10 11
Omit section 81A (2) (b). Insert instead:	12
(b) the person having the benefit of the development consent has appointed a principal certifying authority for the building work, and	13 14 15
(b1) the principal certifying authority has, no later than 7 days before the building work commences, notified the following persons of his or her appointment:	16 17 18
(i) the consent authority,	19
(ii) the council (if the council is not the consent authority), and	20 21
[9] Section 81A (4) (b) and (b1)	22
Omit section 81A (4) (b). Insert instead:	23
(b) the person having the benefit of the development consent has appointed a principal certifying authority for the subdivision work, and	24 25 26
(b1) the principal certifying authority has, no later than 7 days before the subdivision work commences, notified the following persons of his or her appointment:	27 28 29
(i) the consent authority,	30
(ii) the council (if the council is not the consent authority), and	31 32

[10] Section 81A (6) and (7)	1
Insert after section 81A (5):	2
(6) Crown building work	3
Subsections (2) and (4) do not apply in relation to Crown building work that is certified, in accordance with section 116G, to comply with the technical provisions of the State's building laws.	4 5 6 7
(7) Penalty for contravention of subsection (2) or (4)	8
The maximum penalty that may be imposed for a contravention of subsection (2) or (4) is 300 penalty units.	9 10
[11] Section 86 Commencement of complying development	11
Omit section 86 (1) (a). Insert instead:	12
(a) the person having the benefit of the complying development certificate has appointed a principal certifying authority for the building work, and	13 14 15
(a1) the principal certifying authority has, no later than 7 days before the building work commences, notified the council of his or her appointment, and	16 17 18
[12] Section 86 (2) (a) and (a1)	19
Omit section 86 (2) (a). Insert instead:	20
(a) the person having the benefit of the complying development certificate has appointed a principal certifying authority for the subdivision work, and	21 22 23
(a1) the principal certifying authority has, no later than 7 days before the subdivision work commences, notified the council of his or her appointment, and	24 25 26
[13] Section 86 (3) and (4)	27
Insert after section 86 (2):	28
(3) Crown development	29
Subsections (1) and (2) do not apply in relation to development carried out by the Crown.	30 31

(4)	Penalty for contravention of subsection (1) or (2)	1
	The maximum penalty that may be imposed for a contravention of subsection (1) or (2) is 300 penalty units.	2 3
[14]	Section 96AA Modification by consent authorities of consents granted by the Court	4 5
	Omit “council” wherever occurring (except where occurring in section 96AA (1) (b) (ii)).	6 7
	Insert instead “consent authority”.	8
[15]	Section 109C Part 4A certificates	9
	Insert after section 109C (1):	10
	(1A) A single compliance certificate may deal with any number of matters, whether of the same or of a different kind.	11 12
[16]	Section 109E Principal certifying authorities	13
	Omit section 109E (1). Insert instead:	14
	(1) The person having the benefit of a development consent or complying development certificate for development involving building work or subdivision work may appoint the consent authority or an accredited certifier as the principal certifying authority for the development.	15 16 17 18 19
	(1A) Despite subsection (1), such an appointment may not be made by a building contractor (that is, any person by whom the building work or subdivision work is to be carried out) unless the building contractor is the owner of the land on which the work is to be carried out.	20 21 22 23 24
[17]	Section 109E (3)	25
	Omit subsections (3) and (4) (but not the note appearing after subsection (4)).	26 27
	Insert instead:	28
	(3) The functions of the principal certifying authority with respect to building work or subdivision work are as follows:	29 30
	(a) to ensure that a construction certificate is issued in relation to the work,	31 32

(b)	to ensure that each person by whom the work is carried out is the holder of the appropriate licence or permit, and is covered by the appropriate insurance, as required by the <i>Home Building Act 1989</i> ,	1 2 3 4
(c)	to ensure that, while the work is being carried out, it is inspected on such occasions as are prescribed by the regulations,	5 6 7
(d)	to ensure that compliance certificates are issued for each matter as to which the principal certifying authority must be satisfied before issuing the relevant occupation certificate or subdivision certificate but in respect of which the principal certifying authority proposes to rely on compliance certificates issued by other persons,	8 9 10 11 12 13 14
(e)	to ensure that all requirements of this Act and the regulations that must be satisfied before an occupation certificate or subdivision certificate may be issued for the work have been satisfied,	15 16 17 18
(f)	to issue the relevant occupation certificate or subdivision certificate for the work,	19 20
(g)	to comply with such other requirements as may be prescribed by the regulations.	21 22
[18] Section 109EA		23
Insert after section 109E:		24
109EA Replacement of certifying authorities		25
(1)	Unless the relevant authority so approves in writing, a person may not be appointed as:	26 27
(a)	a certifying authority with respect to any construction certificate for any aspect of development, or	28 29
(b)	a principal certifying authority for development,	30
	to replace a person who has previously been appointed as such.	31 32
(2)	For the purposes of this section, the <i>relevant authority</i> is:	33
(a)	if the person previously appointed is an accredited certifier, the accreditation body by which the person is accredited, and	34 35 36

	(b) if the person previously appointed is a consent authority, the consent authority.	1 2
[19]	Section 109H Restriction on issue of occupation certificates	3
	Insert after section 109H (1) (b):	4
	(b1) that all building work involved in the erection of the building has been carried out in accordance with the provisions of each relevant development consent, complying development certificate and construction certificate, and	5 6 7 8 9
[20]	Section 109H (2) (a)	10
	Omit “change of building use”. Insert instead “new building use”.	11
[21]	Section 109M Occupation and use of new building requires occupation certificate	12 13
	Omit “Maximum penalty: 25 penalty units.” from section 109M (1).	14
	Insert instead:	15
	Maximum penalty:	16
	(a) in the case of a Class 1a or Class 10 building, as referred to in the <i>Building Code of Australia</i> , 5 penalty units, or	17 18
	(b) in the case of any other building, 1,000 penalty units.	19
[22]	Section 109N Change of building use of existing building requires occupation certificate	20 21
	Omit “commence” from section 109N (1). Insert instead “effect”.	22
[23]	Section 109Q Regulations under Part 4A	23
	Insert at the end of the section:	24
	(2) In particular, the regulations may authorise a consent authority or council to impose a fee with respect to any Part 4A certificate that is lodged with it, whether pursuant to a requirement of this Act or the regulations or otherwise.	25 26 27 28

[24] Section 109T Accreditation of accredited certifiers	1
Insert after section 109T (2):	2
(2A) For the purposes of subsection (2) (b), an accreditation body may rely on a certificate that has been issued by an insurer and that states that, in respect of a specified period, a specified accredited certifier is covered by the required insurance (within the meaning of section 109ZN).	3 4 5 6 7
[25] Section 109U Auditing of accredited certifiers	8
Omit the section.	9
[26] Section 109ZA Tribunal may make certain disciplinary findings	10
Omit “section 109U or 109Z” from section 109ZA (1).	11
Insert instead “section 109Z or 118Q”.	12
[27] Section 109ZG Conflicts of interest	13
Insert after section 109ZG (1):	14
(1AA) Subsection (1) (a) does not make it an offence for an accredited certifier (otherwise than as a principal certifying authority) to issue a compliance certificate of the kind referred to in section 109C (1) (a) (i) for any aspect of development in respect of which he or she has been involved in the preparation of plans and specifications.	15 16 17 18 19 20
[28] Section 109ZN Accredited certifiers	21
Insert after section 109ZN (2):	22
(3) For the purposes of this section, an accredited certifier who is employed by a council to exercise the functions of a certifying authority on its behalf, whether within or beyond its area, is covered by the required insurance if the council is indemnified by its general insurance policy against any liability to which it may become subject as a result of the exercise of those functions by the accredited certifier.	23 24 25 26 27 28 29
[29] Section 116G Building, demolition and incidental work	30
Omit section 116G (6).	31

[30] Section 118A Power of entry	1
Insert after section 118A (2A):	2
(2B) The principal certifying authority for any development may enter the land on which the development is carried out, including any building or work being erected on the land, for the purpose of exercising his or her functions as the principal certifying authority with respect to the development.	3 4 5 6 7
(2C) Subject to the regulations, this Division applies to a principal certifying authority referred to in subsection (2B) as if his or her functions as a principal certifying authority were the functions of a council and as if he or she had been authorised by a council to enter premises for the purpose of exercising those functions.	8 9 10 11 12 13
[31] Part 6, Division 1B	14
Insert after Division 1A:	15
Division 1B Investigation of certifying authorities	16
118O Definitions	17
In this Division:	18
<i>Departmental auditor</i> means a Departmental auditor appointed under section 118P or 118Q.	19 20
<i>Tribunal</i> means the Administrative Decisions Tribunal.	21
118P Investigation of councils acting as certifying authorities	22
(1) The Director-General may appoint a member of staff of the Department as a Departmental auditor to investigate the work and activities of a council in its capacity as a certifying authority.	23 24 25 26
(2) The Departmental auditor must report to the Director-General on the results of the investigation.	27 28
(3) The Director-General must send a copy of the report to the Director-General of the Department of Local Government and to the council.	29 30 31

(4)	A report furnished to the council under this section must be presented at the next meeting of the council after the report is received.	1 2 3
(5)	Within 40 days after it receives a report under this section, a council must give written notice to the Director-General of the things done or proposed to be done to give effect to any recommendations contained in the report.	4 5 6 7
118Q	Investigation of accredited certifiers acting as certifying authorities	8 9
(1)	The Director-General may appoint a member of staff of the Department as a Departmental auditor to investigate the work and activities of an accredited certifier in his or her capacity as a certifying authority.	10 11 12 13
(2)	The Departmental auditor must report to the Director-General on the results of the investigation.	14 15
(3)	The Director-General must send a copy of the report to the accredited certifier.	16 17
(4)	If satisfied, as a result of any such investigation, that the accredited certifier is or may be guilty of unsatisfactory professional conduct or professional misconduct within the meaning of Part 4B, the Director-General:	18 19 20 21
(a)	may also furnish a copy of the report to the relevant accreditation body and any person prescribed by the regulations, and	22 23 24
(b)	may apply to the Tribunal for a disciplinary finding against an accredited certifier with respect to any matter arising from the report.	25 26 27
(5)	If the Director-General applies to the Tribunal as referred to in subsection (4) (b), the Director-General may, by order in writing served on the accredited certifier, suspend the accredited certifier's authority to exercise the functions of an accredited certifier pending the Tribunal's decision on the application.	28 29 30 31 32 33
(6)	An order under subsection (5) may be varied or revoked by the Tribunal at any time before or during proceedings on an application referred to in subsection (4) (b).	34 35 36

118R Powers of Departmental auditor	1
(1) A Departmental auditor may direct a person to do any one or more of the following:	2
(a) to appear personally before the Departmental auditor at a time and place specified in the direction,	3
(b) to give evidence (including evidence on oath),	4
(c) to produce to the Departmental auditor any document that is in that person's custody or under that person's control,	5
(d) to grant to the Departmental auditor such authorities as may be necessary to enable the Departmental auditor to gain access to any document that is in the custody or under the control of any other person.	6
(2) A person to whom such a direction is given must not fail to comply with the direction.	7
(3) For the purposes of this section, a Departmental auditor may administer an oath.	8
(4) A Departmental auditor may take copies of or extracts from any document to which the Departmental auditor gains access under this section.	9
(5) For the purposes of this section, a Departmental auditor is taken to have been authorised by the Director-General to enter premises under Division 1A, and, subject to the regulations, may exercise the functions conferred on a person so authorised by or under that Division.	10
[32] Section 121H Notice to be given of proposed order	11
Insert after section 121H (4):	12
(5) Notice to principal certifying authority	13
If a council proposes to give an order in relation to building work or subdivision work for which another person is the principal certifying authority, the council must give the other person notice of its intention to give the order.	14

[33] Section 125 Offences against this Act and the regulations	1
Insert after section 125 (4):	2
(5) Unless the context otherwise requires, a requirement under this Act or the regulations that must be complied with by a particular time, or within a particular period, continues after the time has expired or the period ended, and so must still be complied with.	3 4 5 6 7
[34] Section 126 Penalties	8
Omit section 126 (2). Insert instead:	9
(2) A person guilty of an offence against the regulations is, for every such offence, liable to:	10 11
(a) the penalty (not exceeding 1,000 penalty units) expressly imposed by the regulations, or	12 13
(b) if no such penalty is imposed, to a penalty not exceeding 1,000 penalty units.	14 15
[35] Section 127 Proceedings for offences	16
Omit section 127 (5) and (6). Insert instead:	17
(5) Proceedings in respect of an offence against this Act or the regulations may be commenced not later than 2 years after the offence was alleged to be committed.	18 19 20
[36] Section 127 (7)	21
Insert “or the regulations” after “this Act” in section 127 (7).	22
[37] Section 127A Penalty notices for certain offences	23
Insert “or the regulations” after “under this Act” in section 127A (1).	24
[38] Section 127A (6) (d)	25
Insert at the end of section 127A (6) (c):	26
, and	27
(d) prescribe different amounts of penalties for the same offence, including, in the case of a continuing offence, different amounts of penalties for different periods during which the offence continues.	28 29 30 31

[39] Section 127A (9)	1
Omit the subsection. Insert instead:	2
(9) In this section, <i>authorised person</i> means a person who is declared by the regulations to be an authorised person for the purposes of this section or who belongs to a class of persons so declared.	3 4 5 6
[40] Section 148A	7
Insert after section 148:	8
148A Improper influence with respect to conduct of accredited certifier acting as certifying authority	9 10
(1) An accredited certifier must not, on an understanding that he or she will act otherwise than impartially in the exercise of his or her functions as a certifying authority, seek or accept, or offer or agree to accept, any benefit of any kind, whether on his or her own behalf or on behalf of any other person.	11 12 13 14 15
Maximum penalty: 10,000 penalty units or imprisonment for 2 years, or both.	16 17
(2) A person must not, on an understanding that an accredited certifier will act otherwise than impartially in the exercise of his or her functions as a certifying authority, give, or offer or agree to give, any benefit of any kind, whether to the accredited certifier or to any other person.	18 19 20 21 22
Maximum penalty: 10,000 penalty units or imprisonment for 2 years, or both.	23 24
(3) In this section, a reference to the functions of a certifying authority includes a reference to the functions of a principal certifying authority under section 109E.	25 26 27
[41] Section 158	28
Insert after section 157:	29
158 Exclusion of personal liability	30
A matter or thing done, or omitted to be done, by:	31
(a) the Minister, or	32
(b) the Director-General, or	33

(c)	any member of staff of the Department, or	1
(d)	a Commissioner of Inquiry, or	2
(e)	the Local Government Liaison Committee, or any member of that Committee, or	3 4
(f)	any committee referred to in section 22, or any member of such a committee, or	5 6
(g)	any person acting under the direction of a person or body referred to in paragraph (a)–(f),	7 8
	does not subject the Minister, the Director-General, a member of staff, the Commissioner of Inquiry, a committee member or a person so acting personally to any action, liability, claim or demand if the matter or thing was done, or omitted to be done, in good faith for the purpose of executing this Act.	9 10 11 12 13
[42]	Schedule 6 Savings, transitional and other provisions	14
	Insert at the end of clause 1 (1):	15
	<i>Building Legislation Amendment (Quality of Construction) Act 2002</i>	16 17
[43]	Schedule 6	18
	Insert at the end of the Schedule, with appropriate Part and clause numbers:	19 20
Part	Building Legislation Amendment (Quality of Construction) Act 2002	21 22
	Definition	23
	In this Part, <i>the 2002 amending Act</i> means the <i>Building Legislation Amendment (Quality of Construction) Act 2002</i> .	24 25
	Status of certain committees	26
	A committee referred to in section 20 or 22 is taken from the time of its constitution to have been a statutory body representing the Crown.	27 28 29
	Delegations	30
	Any authorisation granted to the Director-General under clause 199 of the <i>Environmental Planning and Assessment Regulation 2000</i> that was in force immediately before the	31 32 33

commencement of section 23 (1A), as inserted by the 2002 amending Act, is taken to be a delegation under section 23 (1), and may be subdelegated accordingly. 1
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Nature of construction certificate 4

Section 80 (12), as amended by the 2002 amending Act, extends to any variation to a construction certificate, plan or specification that lawfully occurred before the commencement of that amendment. 5
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Commencement of development under development consents 9

Section 81A, as amended by the 2002 amending Act, extends to building work or subdivision work the subject of a development consent granted before the commencement of those amendments unless the work had begun before that commencement. 10
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Commencement of development under complying development certificates 15
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Section 86, as amended by the 2002 amending Act, extends to building work or subdivision work the subject of a complying development certificate issued before the commencement of those amendments unless the work had begun before that commencement. 17
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Part 4A certificates 22

Section 109C (1A), as inserted by the 2002 amending Act, extends to matters arising before the commencement of that subsection. 23
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Appointment of principal certifying authorities 26

Section 109E, as amended by the 2002 amending Act, extends to any development consent or complying development certificate issued before the commencement of those amendments for which a principal certifying authority has yet to be appointed. 27
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Replacement of certifying authorities 32

Section 109EA, as inserted by the 2002 amending Act, extends to the replacement of a certifying authority or principal certifying authority who had been appointed before the commencement of that section. 33
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Restriction on issue of occupation certificates	1
Section 109H (1) (b1), as inserted by the 2002 amending Act, does not apply to any building work that commenced before that amendment.	2 3 4
Conflicts of interest	5
Section 109ZG (1AA), as inserted by the 2002 amending Act, extends to matters arising before the commencement of that subsection.	6 7 8
Investigation of certifying authorities	9
(1) Subject to subclause (2), Division 1B of Part 6, as inserted by the 2002 amending Act, extends to matters arising before the commencement of that Division.	10 11 12
(2) Section 109U, as in force immediately before its repeal by the 2002 amending Act, continues to apply to any investigation that had commenced before the repeal of that section as if that Act had not been enacted.	13 14 15 16
Proceedings for offences	17
Section 127 (5), as substituted by the 2002 amending Act, does not apply to offences arising before the commencement of that amendment.	18 19 20
Improper influence with respect to conduct of accredited certifier acting as certifying authority	21 22
Section 148A, as inserted by the 2002 amending Act, does not apply to conduct occurring before the commencement of that section.	23 24 25
Exclusion of personal liability	26
Section 158, as inserted by the 2002 amending Act, extends to matters arising before the commencement of that section.	27 28
Conditions of development consent	29
Clauses 98A and 98B of the <i>Environmental Planning and Assessment Regulation 2000</i> , as inserted by the 2002 amending Act, do not apply to work that had been commenced before the commencement of those clauses.	30 31 32 33

Conditions of complying development certificate	1
Clauses 136B and 136C of the <i>Environmental Planning and Assessment Regulation 2000</i> , as inserted by the 2002 amending Act, do not apply to work that had been commenced before the commencement of those clauses.	2 3 4 5
Time limits for accredited certifiers	6
The amendments to clauses 130, 138, 142, 151 and 160 of the <i>Environmental Planning and Assessment Regulation 2000</i> made by the 2002 amending Act do not apply to any determination made under any of those clauses, or any certificate issued under any of those clauses, before the commencement of those amendments.	7 8 9 10 11 12
1.2 Environmental Planning and Assessment Regulation 2000	13
[1] Part 6, Division 8A, heading	14
Insert before clause 98:	15
Division 8A Prescribed conditions of development consent	16 17
[2] Clauses 98A and 98B	18
Insert after clause 98:	19
98A Erection of signs	20
(1) For the purposes of section 80A (11) of the Act, the requirements of this clause are prescribed as conditions of a development consent for development that involves any building work or demolition work.	21 22 23 24
(2) A sign must be erected in a prominent position on any work site on which building work or demolition work is being carried out:	25 26 27
(a) showing the name, address and telephone number of the principal certifying authority for the work, and	28 29
(b) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours, and	30 31 32
(c) stating that unauthorised entry to the work site is prohibited.	33 34

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- (3) Any such sign is to be maintained while the building work or demolition work is being carried out, but must be removed when the work has been completed. 1
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- (4) This clause does not apply in relation to building work or demolition work that is carried out inside, and does not affect the external walls of, an existing building. 4
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- (5) This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws. 7
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- 98B Notification of Home Building Act 1989 requirements** 11
- (1) For the purposes of section 80A (11) of the Act, the requirements of this clause are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the *Home Building Act 1989*. 12
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- (2) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information: 17
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- (a) in the case of work to be done by the holder of a contractor licence under that Act: 22
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- (i) the name and licence number of the contractor, 24
and 25
- (ii) the name of the insurer by whom the work is insured under Part 6 of that Act, 26
27
- (b) in the case of work to be done by the holder of an owner-builder permit under that Act, the name and permit number of the owner-builder. 28
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- (3) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information. 31
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(4)	This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State’s building laws.	1 2 3 4
[3]	Clause 103 Notice under section 81A of the Act of appointment of principal certifying authority	5 6
	Omit “(2) (b) (ii) or (4) (b) (ii)”. Insert instead “(2) (b1) or (4) (b1)”.	7
[4]	Clause 103 (a)	8
	Omit the paragraph.	9
[5]	Clause 103 (e)	10
	Insert “, and of the person by whom the principal certifying authority was appointed” after “authority”.	11 12
[6]	Clause 103 (f) (iv)	13
	Insert at the end of clause 103 (f) (iii):	14
	and	15
	(iv) a telephone number at which he or she may be contacted during ordinary office hours,	16 17
[7]	Clause 130 Procedure for determining application for complying development certificate	18 19
	Omit “7 days” from clause 130 (4). Insert instead “2 days”.	20
[8]	Clause 135 Notice under section 86 of the Act of appointment of principal certifying authority	21 22
	Omit “(1) (a) (ii) or (2) (a) (ii)”. Insert instead “(1) (a1) or (2) (a1)”.	23
[9]	Clause 135 (a)	24
	Omit the paragraph.	25
[10]	Clause 135 (e)	26
	Insert “, and of the person by whom the principal certifying authority was appointed” after “authority”.	27 28

[11] Clause 135 (f) (iv)	1
Insert at the end of clause 135 (f) (iii):	2
and	3
(iv) a telephone number at which he or she may be contacted during ordinary office hours,	4
	5
[12] Part 7, Division 2A, heading	6
Insert after clause 136:	7
Division 2A Conditions of complying development certificate	8
	9
[13] Existing clause 133	10
Renumber as clause 136A, and transfer to Division 2A of Part 7.	11
[14] Clauses 136B and 136C	12
Insert after clause 136A (as transferred in accordance with item [13]):	13
136B Erection of signs	14
(1) A complying development certificate for development that involves any building work or demolition work must be issued subject to a condition that the work is carried out in accordance with the requirements of this clause.	15
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(2) A sign must be erected in a prominent position on any work site on which building work or demolition work is being carried out:	19
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(a) showing the name, address and telephone number of the principal certifying authority for the work, and	22
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(b) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours, and	24
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(c) stating that unauthorised entry to the work site is prohibited.	27
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(3) Any such sign is to be maintained while the building work or demolition work is being carried out, but must be removed when the work has been completed.	29
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(4)	This clause does not apply in relation to building work or demolition work that is carried out inside, and does not affect the external walls of, an existing building.	1 2 3
(5)	This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws.	4 5 6 7
136C	Notification of Home Building Act 1989 requirements	8
(1)	A complying development certificate for development that involves any residential building work within the meaning of the <i>Home Building Act 1989</i> must be issued subject to a condition that the work is carried out in accordance with the requirements of this clause.	9 10 11 12 13
(2)	Residential building work within the meaning of the <i>Home Building Act 1989</i> must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:	14 15 16 17 18
(a)	in the case of work to be done by the holder of a contractor licence under that Act:	19 20
(i)	the name and licence number of the contractor, and	21 22
(ii)	the name of the insurer by whom the work is insured under Part 6 of that Act,	23 24
(b)	in the case of work to be done by the holder of an owner-builder permit under that Act, the name and permit number of the owner-builder.	25 26 27
(3)	If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.	28 29 30 31 32 33 34
(4)	This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws.	35 36 37 38

[15] Clause 138 Compliance certificates	1
Omit “7 days” from clause 138 (3). Insert instead “2 days”.	2
[16] Clause 142 Procedure for determining application for construction certificate	3
Omit “7 days” from clause 142 (2). Insert instead “2 days”.	4
[17] Clause 147 Form of construction certificate	6
Insert after clause 147 (1) (e):	7
(f) the classification (in accordance with the <i>Building Code of Australia</i>) of the building to which the certificate relates.	8
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[18] Clause 147 (1A)	11
Insert after clause 147 (1):	12
(1A) A construction certificate may indicate different classifications for different parts of the same building.	13
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[19] Clause 148 Modification of construction certificate	15
Insert after clause 148 (2):	16
(3) As soon as practicable after granting an application to modify development in respect of which an application for a construction certificate has previously been referred to the Fire Commissioner under clause 144, but for which (in its modified form) an application for a construction certificate for a building would no longer be required to be so referred, a certifying authority must notify the Fire Commissioner that the building to which the construction certificate relates is no longer a building to which clause 144 applies.	17
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[20] Clause 151 Procedure for determining application for occupation certificate	26
Omit “7 days” from clause 151 (2). Insert instead “2 days”.	27
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[21] Clause 156 Occupation and use of new buildings: section 109M (2)	29
Omit clause 156 (1) and the second paragraph of the note to the clause.	30

[22] Clause 160 Procedure for determining application for subdivision certificate	1 2
Omit “7 days” from clause 160 (2). Insert instead “2 days”.	3
[23] Clause 162 Consent authority to be notified of replacement principal certifying authority	4 5
Omit “is given to the consent authority within 2 days of the appointment”.	6
Insert instead “is given to the consent authority (and, if the consent authority is not the council, to the council) within 2 days of the appointment, but only in circumstances in which an accreditation body’s approval is required for the appointment”.	7 8 9 10
[24] Clause 162A	11
Insert after clause 162:	12
162A Inspections to be conducted: section 109E (3)	13
(1) For the purposes of section 109E (3) (c) of the Act, the occasions on which building work must be inspected are as set out in this clause.	14 15 16
(2) In the case of the erection of a concrete structure (other than the placement or relocation of a pre-fabricated concrete structure), inspections must be conducted:	17 18 19
(a) after any excavation work has been completed and before the placement of foundation material, and	20 21
(b) for each stage of construction that involves a concrete pour:	22 23
(i) after any steel reinforcement has been positioned and before any formwork has been completed, and	24 25 26
(ii) after any formwork has been completed and before the concrete is poured.	27 28
(3) In the case of a building whose construction involves the placement or relocation of a pre-fabricated concrete structure, an inspection must be conducted immediately after the placement or relocation has been completed.	29 30 31 32
(4) In the case of a building whose construction involves a physical termite risk management system, an inspection must be conducted immediately after the system has been installed.	33 34 35

(5)	In the case of a building whose construction involves floor framing, an inspection must be conducted immediately after the framing has been completed.	1 2 3
(6)	In the case of a building whose construction involves wall framing, an inspection must be conducted immediately after the framing has been completed.	4 5 6
(7)	In the case of a building whose construction involves roof framing, an inspection must be conducted immediately after the framing has been completed.	7 8 9
(8)	In the case of a building or structure whose construction involves the installation of waterproofing, an inspection must be conducted immediately after the installation has been completed.	10 11 12 13
(9)	In all cases, an inspection must be conducted after the building or structure has been completed and before an occupation certificate is issued in relation to the building.	14 15 16
[25]	Clause 177 Annual fire safety statement to be given to council and Fire Commissioner and prominently displayed in building	17 18
	Insert after clause 177 (2):	19
(2A)	Failure to give an annual fire safety statement to the council within the time prescribed by subclause (2) (b) constitutes a separate offence for each week beyond the expiry of that time for which the failure continues.	20 21 22 23
[26]	Clause 180 Supplementary fire safety statement to be given to council and Fire Commissioner and prominently displayed in building	24 25 26
	Insert after clause 180 (2):	27
(2A)	Failure to give a supplementary fire safety statement to the council within the time required by the current fire safety schedule for the building constitutes a separate offence for each week beyond the expiry of that time for which the failure continues.	28 29 30 31 32
[27]	Clause 284 Penalty notice offences: section 127A	33
	Omit “Column 4” from clause 284 (1) (b). Insert instead “Column 2”.	34

[28] Clause 284 (3) and (4)	1
Insert after clause 284 (2):	2
(3) The following persons are declared to be authorised persons for the purposes of section 127A of the Act:	3
(a) any person who is generally or specially authorised by the Minister to be an authorised person for those purposes,	4
(b) any person (including a member of staff of the Department) who is generally or specially authorised by the Director-General to be an authorised person for those purposes,	5
(c) any person (including an employee of a council) who is generally or specially authorised by a council to be an authorised person for those purposes,	6
(d) any police officer.	7
(4) Despite subclause (3), the following persons only are declared to be authorised persons for the purposes of section 127A of the Act for an offence referred to in section 125 (2) of the Act in relation to a contravention of clause 130 (4), 138 (3), 142 (2), 151 (2) or 160 (2) of this Regulation:	8
(a) any person who is generally or specially authorised by the Minister to be an authorised person for those purposes,	9
(b) any person (including a member of staff of the Department) who is generally or specially authorised by the Director-General to be an authorised person for those purposes.	10
[29] Clause 285 Short descriptions	11
Omit the clause.	12
[30] Schedule 5 Penalty notice offences	13
Omit Columns 2 and 3, and renumber Column 4 as Column 2.	14

[31] Schedule 5

1

Insert after the matter relating to a contravention of order No 11 in the Table to section 121B:

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3

Section 125 (1) of the Act in relation to contravention of order No 15 in Table to section 121B	\$1,500
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[32] Schedule 5

4

Insert before the matter relating to a contravention of clause 172 (1) (b):

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Section 125 (2) of the Act in relation to contravention of clause 130 (4) of this Regulation	\$600
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Section 125 (2) of the Act in relation to contravention of clause 138 (3) of this Regulation	\$600
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Section 125 (2) of the Act in relation to contravention of clause 142 (2) of this Regulation	\$600
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Section 125 (2) of the Act in relation to contravention of clause 151 (2) of this Regulation	\$600
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Section 125 (2) of the Act in relation to contravention of clause 160 (2) of this Regulation	\$600
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[33] Schedule 5

Omit “\$600” from Column 2 (as renumbered by item [30]) in relation to a contravention of clause 177 (1).

Insert instead:

\$1,000, for the offence of failing to give an annual fire safety certificate that occurs during the second week after the time for giving the certificate expires.

\$1,500, for the offence of failing to give an annual fire safety certificate that occurs during the third week after the time for giving the certificate expires.

\$2,000, for the offence of failing to give an annual fire safety certificate that occurs during the fourth or any subsequent week after the time for giving the certificate expires.

[34] Schedule 5

Omit “\$600” from Column 2 (as renumbered by item [30]) in relation to a contravention of clause 180 (1).

Insert instead:

\$500, for the offence of failing to give a supplementary fire safety certificate that occurs during the first week after the time for giving the certificate expires.

\$1,000, for the offence of failing to give a supplementary fire safety certificate that occurs during the second week after the time for giving the certificate expires.

\$1,500, for the offence of failing to give a supplementary fire safety certificate that occurs during the third week after the time for giving the certificate expires.

\$2,000, for the offence of failing to give a supplementary fire safety certificate that occurs during the fourth or any subsequent week after the time for giving the certificate expires.

1.3 Environmental Planning and Assessment (Savings and Transitional) Regulation 1998	1 2
Clause 51 Application of sections 93 and 732 to matters arising under amended EP&A Act 1979	3 4
Omit the clause.	5
1.4 Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001 No 93	6 7 8
Schedule 2 Amendment of Environmental Planning and Assessment Act 1979	9 10
Omit Schedule 2 [11]–[13].	11

Schedule 2 Amendment of home building legislation	1
(Section 4)	2
2.1 Home Building Act 1989 No 147	3
[1] Section 3 Definitions	4
Insert in alphabetical order in section 3 (1):	5
<i>officer</i> , in relation to a corporation, includes a director of the corporation and any person concerned in the management of the corporation.	6 7 8
[2] Section 20 Issue of licences	9
Insert after section 20 (3):	10
(4) The Director-General must reject an application for a licence if not satisfied that the applicant meets such standards of financial solvency as the Director-General determines to be appropriate to the class of licence to which the application relates.	11 12 13 14 15
[3] Section 20 (5)	16
Insert “or (4)” after “(2)”.	17
[4] Section 40 Renewal or restoration of authorities	18
Insert after section 40 (4):	19
(4A) The Director-General must reject an application for renewal or restoration of a licence if not satisfied that the applicant meets such standards of financial solvency as the Director-General determines to be appropriate to the class of licence to which the application relates.	20 21 22 23 24
(4B) A decision of the Director-General relating to determining standards under subsection (4A) cannot be reviewed by the Administrative Decisions Tribunal in an application for review made under this Act.	25 26 27 28

[5] Section 48A Definitions	1
Omit the definition of <i>building dispute</i> from section 48A (1).	2
Insert instead:	3
<i>building dispute</i> means a dispute that has been notified as referred to in section 48C.	4 5
[6] Part 3A, Division 2	6
Omit the Division. Insert instead:	7
Division 2 Dealing with a building dispute	8
48B Definitions	9
In this Division:	10
<i>complainant</i> means a person who has notified the Director-General of a building dispute under section 48C.	11 12
<i>contractor</i> means the holder of a contractor licence to whom a building dispute relates.	13 14
<i>inspector</i> means a person appointed to carry out an investigation into a building dispute, as referred to in section 48D.	15 16 17
<i>rectification order</i> means an order referred to in section 48E (1) or (2).	18 19
48C Notification of building dispute	20
Any person may notify the Director-General, in such manner as the Director-General may approve, that the person has a dispute with the holder of a contractor licence with respect to residential building work or specialist work done by the contractor or the supply of a kit home by the contractor.	21 22 23 24 25
48D Investigation of dispute	26
(1) The Director-General may appoint a member of staff of the Department of Fair Trading to investigate any matter that has given rise to a building dispute.	27 28 29

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- (2) After completing an investigation, an inspector must cause a written report to be prepared on the results of the investigation and cause copies of the report to be given to the complainant and the contractor. 1
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48E Inspector may make rectification order 5

- (1) If, after completing an investigation under section 48D, an inspector is satisfied: 6
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- (a) that any residential building work or specialist work contracted to be done by the contractor is incomplete, or 8
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 - (b) that any residential building work or specialist work done by the contractor is defective, or 10
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 - (c) that the contractor, in the course of doing any residential building work or specialist work, has caused damage to any structure or work, or 12
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 - (d) that, as a consequence of any defective residential building work or specialist work done by the contractor, a structure or work has been damaged, 15
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the inspector may serve a written order on the contractor requiring the contractor to take such steps as are specified in the order to ensure that the work is completed or the defect or damage rectified, as the case requires. 18
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- (2) If, after completing an investigation under section 48D, an inspector is satisfied: 22
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- (a) that any kit home supplied by the contractor is incomplete, or 24
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 - (b) that any kit home supplied by the contractor is defective, or 26
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 - (c) that the contractor has failed to supply a kit home, 28

the inspector may serve a written order on the contractor requiring the contractor to take such steps as are specified in the order to ensure that the kit home is supplied or completed or the defect rectified, as the case requires. 29
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- (3) A rectification order: 33
- (a) may specify conditions (including conditions with respect to the payment of money) to be complied with by the complainant before the requirements of the order must be complied with, and 34
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(b)	must specify a date by which the requirements of the order must be complied with, subject to the complainant's compliance with any condition referred to in paragraph (a), and	1 2 3 4
(c)	must indicate that the order will cease to have effect if the matter giving rise to the order becomes the subject of a building claim before the date specified in accordance with paragraph (b).	5 6 7 8
48F	Effect of rectification order	9
(1)	Except as provided by section 51, a rectification order does not give rise to any rights or obligations.	10 11
(2)	Subject to section 48I, a rectification order ceases to have effect for the purposes of section 51 if the matter giving rise to the order becomes the subject of a building claim before the date specified in accordance with section 48E (3) (b).	12 13 14 15
[7]	Section 48I Application for determination of building claim	16
	Insert at the end of the section:	17
(2)	A building claim may be withdrawn by the claimant at any time.	18 19
(3)	If, immediately before a building claim was made, the claimant was subject to the requirements of a rectification order under Division 2, the building claim may not be withdrawn except with the leave of the Tribunal.	20 21 22 23
(4)	When granting leave to the withdrawal of a building claim referred to in subsection (3), the Tribunal may restore the rectification order referred to in that subsection.	24 25 26
[8]	Section 48J	27
	Omit the section. Insert instead:	28
48J	Certain applications to be rejected	29
	The Registrar of the Tribunal must reject any application to the Tribunal for the determination of a building claim unless:	30 31
(a)	the Registrar is satisfied that the subject-matter of the building claim has been investigated under Division 2, or	32 33 34

(b)	the Chairperson of the Tribunal directs that the building claim be accepted without such an investigation having been made.	1 2 3
[9]	Section 48N Tribunal may have regard to certain building reports	4
	Omit “an expert to whom a building claim was referred under Division 2 in relation to the matter” from section 48N (1).	5 6
	Insert instead “an inspector by whom any matter giving rise to a building dispute has been investigated under Division 2”.	7 8
[10]	Section 48N (2)	9
	Omit “An expert to whom a building claim was referred under Division 2”.	10 11
	Insert instead “The inspector”.	12
[11]	Section 48N (2A), (2B), (2C) and (2D)	13
	Insert after section 48N (2):	14
	(2A) The Tribunal may appoint an independent expert, from a panel of experts approved by the Chairperson of the Tribunal, to advise the Tribunal as to any matter that the Tribunal refers to the expert for advice.	15 16 17 18
	(2B) In any proceedings for which an independent expert has been appointed under subsection (2A), no party may call any other expert to give evidence in the proceedings, or tender any report prepared by any other expert, except by leave of the Tribunal.	19 20 21 22 23
	(2C) Subject to any order of the Tribunal, the costs of an independent expert appointed under subsection (2A) are to be borne by the parties in equal proportions.	24 25 26
	(2D) Anything done or omitted to be done by an independent expert under this Division does not, if the thing was done or omitted to be done in good faith for the purposes of this Division, subject the expert personally to any action, liability, claim or demand.	27 28 29 30 31
[12]	Section 48N (3)	32
	Insert “inspector or” before “expert”.	33

[13] Section 51 Improper conduct: generally	1
Insert after section 51 (2) (a):	2
(b) without reasonable cause, does not comply with the requirements of a rectification order under Division 2 of Part 3A, or	3 4 5
[14] Section 54 Improper conduct: members of partnerships or officers of corporations	6 7
Insert after section 54 (4):	8
(5) Division 2 applies to disciplinary action taken against an individual referred to in subsection (4) in the same way as it applies to disciplinary action taken against the holder of an authority, and references in that Division to the holder of an authority extend to an individual so referred to.	9 10 11 12 13
[15] Section 62 Disciplinary action that may be taken by Director-General	14 15
Omit section 62 (f). Insert instead:	16
(f) cancel the authority,	17
(g) disqualify the holder, either temporarily or permanently, from being any one or more of the following:	18 19 20
(i) the holder of any authority, or any specified kind of authority,	21 22
(ii) a member of a partnership, or an officer of a corporation that is a member of a partnership, that is the holder of an authority,	23 24 25
(iii) an officer of a corporation that is the holder of an authority.	26 27
[16] Section 126 Power of entry	28
Omit “its” from section 126 (1). Insert instead “the Director-General’s”.	29
[17] Section 138A Penalty notices	30
Insert at the end of section 138A (9) (b):	31
, or	32
(c) an investigator appointed under the <i>Fair Trading Act 1987</i> .	33 34

[18] Schedule 4 Savings and transitional provisions	1
Insert at the end of clause 2 (1):	2
<i>Building Legislation Amendment (Quality of Construction) Act 2002</i>	3
	4
[19] Schedule 4	5
Insert at the end of the Schedule, with appropriate Part and clause numbers:	6
	7
Part Building Legislation Amendment (Quality of Construction) Act 2002	8
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Definition	10
In this Part, <i>the 2002 amending Act</i> means the <i>Building Legislation Amendment (Quality of Construction) Act 2002</i> .	11
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Issue, renewal and restoration of licences	13
Sections 20 and 40, as amended by Schedule 2.1 [2]–[4] to the 2002 amending Act, do not apply to applications made before the commencement of those amendments.	14
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Continuation of Division 2 of Part 3A in relation to current building disputes	17
Division 2 of Part 3A, as in force immediately before the commencement of Schedule 2.1 [6] to the 2002 amending Act, continues to apply to current building disputes (that is, building disputes that had been notified in accordance with that Division before that commencement) as if that Act had not been enacted.	18
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Use of expert’s building reports	25
Section 48N, as in force immediately before the commencement of Schedule 2.1 [9] and [10] to the 2002 amending Act, continues to apply to proceedings on a building claim with respect to a matter that had been dealt with under Division 2 of Part 3A, as then in force.	26
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Disciplinary action	31
Section 62, as amended by Schedule 2.1 [15] to the 2002 amending Act, extends to proceedings commenced before the commencement of that amendment.	32
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2.2 Home Building Regulation 1997	1
[1] Clause 59	2
Insert after clause 58:	3
59 Conditions to be included in certain contracts	4
(1) Pursuant to section 7E of the Act, a contract to do residential building work must include each of the conditions set out in Part 1 of Schedule 3A.	5 6 7
(2) Pursuant to section 16DE of the Act, a contract to supply a kit home must include each of the conditions set out in Part 2 of Schedule 3A.	8 9 10
[2] Schedule 3A	11
Insert after Schedule 3:	12
Schedule 3A Conditions to be included in certain contracts	13 14
(Clause 59)	15
Part 1 Contracts to do residential building work	16
1 Plans and specifications	17
(1) All plans and specifications for work to be done under this agreement, including any variations to those plans and specifications, are taken to form part of this agreement.	18 19 20
(2) Any agreement to vary this agreement, or to vary the plans and specifications for work to be done under this agreement, does not have effect unless it is in writing signed by each party to this agreement.	21 22 23 24
(3) This clause does not apply to a contract of the kind referred to in clause 13 of the <i>Home Building Regulation 1997</i> .	25 26
2 Quality of construction	27
All work done under this agreement will comply with:	28
(a) the <i>Building Code of Australia</i> , and	29
(b) all other relevant codes, standards and specifications, and	30 31

(c)	the conditions of any relevant development consent or complying development certificate.	1 2
3	Final payment	3
(1)	This clause applies to work involved in the erection of a building for which an occupation certificate is required under section 109M of the <i>Environmental Planning and Assessment Act 1979</i> .	4 5 6 7
(2)	The final payment for such work (being an amount not less than 5 per cent of the contract price) does not become payable until the work satisfies all requirements that must be satisfied by the work before an occupation certificate can be issued.	8 9 10 11
(3)	This clause does not apply to a contract of the kind referred to in clause 13 of the <i>Home Building Regulation 1997</i> .	12 13
Part 2	Contracts to supply kit homes	14
4	Plans and specifications	15
(1)	All plans and specifications for building components to be supplied under this agreement, including any variations to those plans and specifications, are taken to form part of this agreement.	16 17 18 19
(2)	Any agreement to vary this agreement, or to vary the plans and specifications for building components to be supplied under this agreement, does not have effect unless it is in writing signed by each party to this agreement.	20 21 22 23
5	Quality of construction	24
	All building components supplied under this agreement will comply with:	25 26
(a)	the <i>Building Code of Australia</i> , and	27
(b)	all other relevant codes, standards and specifications, and	28 29
(c)	the conditions of any relevant development consent or complying development certificate.	30 31

2.3 Home Building Legislation Amendment Act 2001 No 51	1
[1] Schedule 9 Amendments inserting savings and transitional provisions	2 3
Omit “Section 103A (3) and sections” from clause 66 (4), as proposed to be inserted by Schedule 9 [2] into Schedule 4 to the <i>Home Building Act 1989</i> .	4 5 6
Insert instead “Sections”.	7
[2] Schedule 9	8
Omit “the subsection and sections” from clause 66 (4), as proposed to be inserted by Schedule 9 [2] into Schedule 4 to the <i>Home Building Act 1989</i> .	9 10
Insert instead “the sections”.	11
2.4 Consumer, Trader and Tenancy Tribunal Act 2001 No 82	12
Section 28 Procedure of Tribunal generally	13
Insert after section 28 (7):	14
(8) Subsection (5) (h) does not apply in relation to proceedings on a building claim arising under Part 3A of the <i>Home Building Act 1989</i> .	15 16 17
Note. The withdrawal of building claims is dealt with in section 48I of that Act.	18 19

Schedule 3 Amendment of conveyancing legislation 1
(Section 5) 2

Conveyancing (Sale of Land) Regulation 2000 3

Schedule 2 Prescribed term 4

Number the existing clause as “1” and insert after that clause: 5

2 Strata units bought “off the plan” 6

(1) This clause applies to a contract for the sale of: 7

(a) a lot in a strata plan within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, or 8
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(b) a lot in a proposed strata plan within the meaning of either of those Acts, 11
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where the contract is entered into before the date of registration of the strata plan, or within 12 months after that date, and where an occupation certificate under section 109M of the *Environmental Planning and Assessment Act 1979* is required before the building to which the lot relates may lawfully be occupied. 13
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Note. An occupation certificate is not required for any lot that forms part of development carried out by or on behalf of the Crown. 19
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(2) Despite any other provision of this contract or any other agreement, completion under this contract is not required until at least 14 days after the purchaser has been provided with a final occupation certificate within the meaning of the *Environmental Planning and Assessment Act 1979* for the building to which the lot relates. 21
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3 “Land and house” packages 27

(1) This clause applies to a contract for sale of a lot in a deposited plan or in a proposed deposited plan, being a contract: 28
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(a) that also provides for the erection by the vendor of a dwelling-house on the lot, or 30
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(b) that has been entered into in association with some other contract or agreement between the vendor (or some other person acting together with the vendor) and the purchaser that provides for the erection by the vendor (or that other person) of a dwelling-house on the lot,

where an occupation certificate under section 109M of the *Environmental Planning and Assessment Act 1979* is required before the dwelling-house may lawfully be occupied.

Note. An occupation certificate is not required for any lot that forms part of development carried out by or on behalf of the Crown.

(2) Despite any other provision of this contract or any other agreement, completion under this contract is not required until at least 14 days after the purchaser has been provided with a final occupation certificate within the meaning of the *Environmental Planning and Assessment Act 1979* for the dwelling-house to be erected on the lot.

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